

REMARKS

Claims 1-2, 4-10, 12-18, and 20 were pending. Claims 5 and 13 have been cancelled, claims 21-23 have been added, and claims 1, 6, 8, 14, and 17 have been amended. Therefore, claims 1-2, 4, 6-10, 12, 14-18, and 20-23 remain pending in the application subsequent entry of the present amendment.

35 U.S.C. § 103 Rejections

In the present Office Actions, claims 1-2, 4-10, 12-18, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Midgley et al, (U.S. Patent No. 6,625,623 hereinafter “Midgley”) in view of Rubin et al. (U.S. Patent No. 5,680,573 hereinafter “Rubin”). Applicant respectfully traverses the above rejections and requests reconsideration.

Applicant submits the cited art, either singly or in combination, does not disclose all of the features of claim 1. Present claim 1 has been amended to include features of prior claim 5. As amended, claim 1 recites a system including the features:

“wherein said application, first storage device, and replicator are within a first node of said system, and wherein said system includes a second node with a second storage device coupled to said first node, wherein said replicator component is further configured to convey said write transactions to said second node.” (emphasis added).

In paragraph 7 of the present Office Action, it is suggested that the above highlighted features are disclosed by Midgley. In particular, item 28 of Fig. 1 and the associated text is cited. However, Applicant disagrees. Item 28 of Midgley is merely a network client and is not a node which includes said application, first storage device, and replicator. For example, as described in Midgley:

“Specifically, FIG. 1 depicts a computer network system 10 that includes a backup server 12, a long-term storage system 14, a cache

storage system 16, a plurality of servers 18, 20 and 22, a console 24, a network client 28 . . .”

Further, in paragraph 4 of the present Office Action, it is stated that the recited application and first storage device are disclosed by Midgley at col. 16, lines 22-40. However, this disclosure of Midgley is describing an agent process 30 which is part of a server (18, 20, 22). As described therein, the agent process may intercept a write to the corresponding database generated by a user mode application. Applicant submits the agent 30, server (18, 20, 22), and database (32, 34, 38) are not within the network client 28. In addition, Midgley discloses a replication process 40 which is part of a backup server. Again, this replication process is not within the client 28, and the features of prior claim 5 are not disclosed. Still further, the recited replication component both monitors write transactions and modifies system resources. Midgley discloses a bandwidth control process 44 which is also located within the backup server 12.

Accordingly, Applicant submits the rejection of prior claim 5 should be withdrawn. Consequently, not all of the features of claim 1 are disclosed by the combination of cited art, and claim 1 is patentably distinct for at least the above reasons. As each of independent claims 9 and 17 include features similar to that of claim 1, each of these claims are patentably distinct for similar reasons.

In addition to the above, the dependent claims recite features not found in the cited art. For example, each of claims 21-23 recite the second node is configured to serve as a failover node if the first node fails. In contrast, Midgley is directed to data backup and not to failover. Such features are nowhere disclosed or suggested by Midgley or Rubin. Accordingly, claims 21-23 are believed patentable for at least these additional reasons as well.

Applicant believes the application to be in condition for allowance. However, should the examiner believe issues remain, the below signed representative would

appreciate and requests a phone interview (512-853-8866) to facilitate a speedy resolution.

CONCLUSION

Applicant submits the application is in condition for allowance, and notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicant(s) hereby petition for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5760-12100/RDR.

Also enclosed herewith are the following items:

☒ Return Receipt Postcard

Respectfully submitted,



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